IN THE HIGH COURT OF KERALA AT ERNAKULAM
PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

WEDNESDAY, THE 11TH APRIL 2007 / 21ST CHAITHRA 1929

WA.No. 1638 of 2006(D)

AGAINST THE JUDGEMENT IN WPC.1258/2004 Dated 25/04/2006
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APPELLANT: RESPONDENTS 1 & 2
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1. THE KERALA PUBLIC SERVICE COMMISSION,
REPRESENTED BY ITS SECRETARY, PATTOM P.O.,
THIRUVANANTHAPURAM.

2. THE DISTRICT OFFICER,
KERALA PUBLIC SERVICE COMMISSION,
DISTRICT OFFICE, CIVIL STATION, PALAKKAD.

BY ADV. SRI.P.C.SASIDHARAN, SC, KPSC

RESPONDENTS: PETITIONER & RESPONDENTS 3 & 4
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1. A.DIVAKARAN, S/O.M.ARUCHAMY,
THENAMPATHY, OZHALAPATHY P.O., PALAKKAD.

2. DEPUTY DIRECTOR OF EDUCATION,
PALAKKAD.

3. RAGOTHAMAN, HIGH SCHOOL ASSISTANT(MATHS)
TAMIL MEDIUM, GOVERNMENT HIGH SCHOOL,
KOZHIPARA, PALAKKAD DISTRICT.

BY GOVERNMENT PLEADER SHRI. SANDESH RAJA FOR R2
SRI.C.T.RAVIKUMAR FOR R1
SMT.K.S.SAIRA

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 4/04/2007, THE COURT ON 11/4/2007 DELIVERED THE FOLLOWING:

P.R.Raman & Antony Dominic, JJ.

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W.A.No.1638 of 2006

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Dated this the 11th day of April, 2007.

JUDGMENT

Antony Dominic,J.

Kerala Public Service Commission and its District Officer Palakkad, the 1st and 2nd respondents in W.P.(C)No. 1258 of 2004, are the appellants herein. The 1st respondent in the appeal filed the writ petition praying for quashing Ext.P1, a letter issued by the 1st appellant rejecting his representation and to declare that he is entitled to be advised and appointed at the fourth turn against the first vacancy in the third recruitment year. He also seeks to quash the appointment order issued to the 4th respondent. The Learned Single Judge by judgment dated 25.04.2006, allowed the writ petition quashing Ext.P1 and declaring that the 1st respondent is entitled to get advised and appointed at the fourth turn, against the first vacancy in the third recruitment year. The appellants were directed to advise the petitioner against the turn of Ezhava community, if need be after terminating the appointment of the 4th respondent. It is against this judgment, this writ appeal is filed.

2. The facts which led to the filing of this writ appeal are that, after a due process of selection, the 1st appellant published a rank list for the post of High School Assistant (Maths), Tamil Medium in Education Department for Palakkad District. In the rank list thus published on 02.04.2001 the 1st respondent herein was included at Rank No.6 with the community benefit of Ezhava. During the currency of the rank list 6 vacancies and one NJD vacancies were

reported and candidates were advised to the post. It is stated that in the previous selection, the communal rotation ended at MR1 15 OC and the rotation following the advice against the three vacancies notified in the first year of recruitment, started at MR1 16. The details of reporting of vacancies and the manner in which the candidates were advised is as under:

<u>First year of recruitment</u>:

1. MR1 16 M Abdul Basheer. K (R.2) Muslim
2. MR1 17 OC Sarikadevi. J (R.1)
3. MR1 18 E TPO
   19 OC Shafeeq Rahiman.M (R.8) Mapila

<u>Third year of recruitment</u>:

4. MR1 18 E (Saji.V.S. (R.3)) (TPO satisfied) E
5. MR1 20 V TPO
   21 OC Ragothaman. R (R.4)
6. MR1 22 LC/A1 TPO
   23 OC Raju. N (R.5) OBC

Though there was one NJD vacancy of Muslim against which Rank No.11 Shaheed Ali was advised, that is not relevant for the purposes of this appeal. It is stated that MR1 18, an Ezhava vacancy was temporarily passed over, on account of the rule fixing 50% ceiling on reservation and in terms of the rules the TPO turns are to be filled up at the earliest opportunity and it is on account of this compulsion that during the third recruitment year when vacancies were apportion in 2:1 the third rank holder Saji.V.S, an Ezhava candidate entitled the benefit of reservation, was adjusted against, MR1 18.

3. In the above background, the 1st respondent herein, an Ezhava candidate, with Rank No.5 filed the writ petition contending that

reading Rule 14(b) and the third proviso and Rule 14 (c) of the General Rules of KS & SSR, Sri.Saji. V.S, though an Ezhava candidate should have been appointed in the open competition quota and not against the reserved quota. It is contended that the advice and appointment in the Ezhava quota should have been given to the petitioner, the next rank holder in the Ezhava quota. According to him after making appointment as above rank should have been fixed as per Rule 27 of the General Rules.

The Learned Single Judge found that;

> **"Both Saji and the petitioner belong to Ezhava community. The first vacancy in the third recruitment year was the reservation turn of the Ezhava community. If the PSC had strictly adhered to the relevant rules, as was done in the case of rank Nos.2 and 8 belonging to Muslim community, the PSC should have advised the writ petitioner against MR1 18 Ezhava turn and should have advised Saji.V.S against MR1 21 OC turn. Instead of working out the rotation in that manner, what was done was to advise Saji.V.S., an Open Competition candidate against MR1 18 Ezhava community turn and then pass over MR1 20 Viswakarma and then advice Ragothaman R., the 4th respondent against MR1 21 OC turn. I do not find any convincing explanation given by the PSC for advising third rank holder Saji.V.S against MR1 18 Ezhava instead of advising him against MR1 21 Oc. I am of the view that the petitioner should have been advised against MR1 18 and Saji.V.S against MR1 21 and then interchanged their position in terms of the third proviso to Rule 14© of KS & SSR. The arguments of MR. Ravikumar have the support of the judgments of this Court in V.P. Jose v. Kerala Khadi and Village Industry Board (supra) and also the principles laid down in L.I.C of India v. Wilson George (1997 (2) KLT 218)".**

Having briefly set out the back ground in which, the issue has come before us, we now proceed to deal with the contentions raised. The 1st respondent writ petitioner has no quarrel with the manner in which the candidates were advised or the roster was operated during the first year of recruitment. The appellants have no case that in the third year of recruitment, they have followed the same method as in the first year of recruitment. On the other hand they are seeking to justify the advice of the third candidate Sri.Saji.V.S against the temporarily passed over 18th point, on the basis that their rules require them to restore the reservation to the particular community at the earliest possible opportunity. According to them in implementation of the said Rule, they had to advice the top most rank holder available from the Ezhava community, the one passed over, and it was accordingly that Sri.Saji.V.S who was Rank No.3 was advised against the first vacancy in the third year of recruitment.

4. The Rule that is relied on by the appellants is an internal guideline followed by them, which is quoted as follows:

> **"While observing the 50% rule it may become necessary to pass over certain reservation turns and to fill up the subsequent O.C. turns. Such passing over the turn is only temporary and hence referred to as T.P.O. In such cases against the reservation turn so passed over the entry "T.P.O. to keep 50% Rule" have tp be made and the turns are to be entered in the T.P.O. Register for satisfying the pending T.P.O. turns in future. The**

pending T.P.O. Turns are to be satisfied at the earliest opportunity subject to the 50% rule. While working out rotations the T.P.O. turns are to be filled up before proceeding to fill-up unit of 20".

It is relying on the prescription that T.P.O turns are to be satisfied at the earliest opportunity, subject to the 50% rule that appellants are seeking justify the advice of the third rank holder against the reservation point.

5. Rule 14(b) of the General Rules prescribed that the claims of members of SC/ ST and OBCs shall also be considered for appointments to vacancies filled up on merit and were a candidate belonging to these categories is selected on merit, the number of posts reserved for the said categories shall not in any way be affected. The purport of this Rule is that if a candidate belonging to a reserved category is included in the general quota by virtue of his merit, he is entitled to be appointed with the general candidates and his appointment cannot be adjusted against the reserved quota.

6. In so far as the facts of this appeal is concerned, the controversy is in relation to the advice of the third rank holder, Sri.Saji.V.S, who is also entitled to the benefit of reservation being an Ezhava candidate, against Point No.18, a slot reserved for Other Backward Classes. If by rvirtue of his ranking in the list, he was to be offered appointment, in view of Rule 14(b), such appointment offered to him cannot be adjusted against the reservation points in the roster. In this case, although he was No.3, the appellants plead that his appointment had to be against point No.18 in the roster as they were obliged to satisfy the T.P.O turn of the first recruitment

year, at the earliest opportunity, when the first vacancy arose in the third recruitment year. In this case, if appointment was offered to Sri. Saji.V.S against an OC vacancy, apart from him, by virtue of the benefit of reservation in his favour, the 1st respondent would have got appointed against the reserved point and that precisely is his contention.

7. While appreciating the contention of the appellants, we have to bear in mind that the benefit of reservation has to be given its full meaning and by a process of interpretation or an implementation of a rule made by it, the appellants cannot deny the benefit of reservation available to a candidate. In a given set of facts it may be that by virtue of the satisfaction "at the earlier opportunity", as prescribed by the guidelines of the appellants themselves, a candidate belonging to a reserved category who is also included in the merit list, might get appointed earlier than his turn in the merit list, the issue has to be approached as to whether the reserved category as a class is benefited in the process or not. This precise question was examined by a full bench of this Court in the case of **Pulomaja Devi v. Gopinathan Nair & Others (1975 KLT 111 (F.B))** where it has been held as follows:

> **"We think too, that consistent with the purpose and object of Rule 14 (b), the 'backward class' and its members are entitled to claim the best of both the words on the basis of merit and of reservation. To oblige a candidate of a 'backward class' who is entitled to selection on basis of merit, although to a lower rank, to take a higher rank on basis of reservation, may promote the chances of the individual, but might, in conceivable cases, deprive the "class" of its legitimate due. In this case, for instance, on the**

> **view of the learned Judge, No.3 in Ext.P2 who is anyway entitled to be selected on the basis of merit, is asked to take the place No2 on the basis of reservation; with the result, that the chance of another member of the backward classes to take place No.2 on basis of reservation and leave No.3 to come in on his merit, is lost. We do not think therefore that this mode of selection would advance the claim of the 'Backward Classes'. In this view, again, we are of the opinion that adequate justice to the Backward Class is better secured by adopting the process of selection put forward on behalf of the Kerala Pubic Service Commission which was endorsed by the learned Advocate General".**

In the judgment of the Hon'ble Supreme Court in the case of **Union of India v. Virpal Singh Chauhan (AIR 1996 (SC) 448)**, it has been held as follows:

> **"Sri. Dhawan points out yet another anomaly. Where a candidate belonging to Schedule Caste gets selected on his own merit, ie., in the general category, he will be treated as a general candidate and on that account he suffers prejudice vis-à-vis another reserved category candidate who could not be selected on his own merit (ie., in the general category) and was selected only because of and under the rule of reservation. For illustrating his submission, learned counsel says, take an instance where out of forty candidates selected, a Scheduled Caste candidate selected on merit stands at**

Sl.No.18 in the select list, whereas another Scheduled Caste candidate selected under and only because of the reserved quota stands at Sl. No.33. But when the occasion for appointment arises, the Scheduled Caste candidate at Sl.No.33 will be appointed against the first roster-point, whereas the Scheduled Caste candidate Sl.No.18, being a general candidate has to wait for his turn. This, the learned counsel says, amounts, in effect to punishing the Scheduled Caste candidate at Sl. No.18 for his merit. Because he was meritorious, he was selected in general category and is treated as a general candidate. He suffers all the disadvantages any other general candidate suffers while another Scheduled Caste candidate, far less meritorious than him and who was selected only by virtue of rule of reservation, steals a march over him in the matter of initial appointment and in promotion after promotion thereafter. This is undoubtedly a piquant situation and may have to be appropriately rectified as and when the occasion arises."

Following the aforesaid judgment of the Hon'ble Supreme Court, a Division Bench of this Court had occasioned to deal with an identical situation in the case of **Life Insurance Corporation of India v. Wilson George (1997 (2) KLT 218)**, where it has been held as follows:

" In the present case, if the respondents are treated as persons entitled to get the benefit of reservation of Other Backward Classes and appointed against the roster point belonging to OBCs, three other candidates who got appointment on the basis of reservation of OBCs will not be entitled to get selection. Those candidates, who are replaced by these respondents are persons who are included in the OBC list. They are persons who secured lesser marks than the last person, who is included in the general merit. So, they cannot be given appointment against the vacancies left by respondents. The respondents got rank No.18, 20 and 21 and they are entitled to be appointed on merit quota whereas the last three candidates in the OBC list could not have secured marks necessary to get appointment under the merit quota to replace candidates who secured rank No.18, 20, and 21. So, this is a situation which cannot be rectified in the way as held by the learned single Judge".

Therefore, in a situation like this, the issue to be examined is which of the interpretation of the rule is beneficial to the reserved category as a class and not to the individual candidate concerned. The guideline framed by the 1st appellant cannot run counter to the general rules in the KS & SSR. In this context the law laid down by the Apex Court in **Bharathidasan University and another Vs. All**

India Council for Technical Education and Others (2001 (8) SCC 676) is of relevance. We quote;

> **"The fact that the Regulations may have the force of law or when made have to be laid down before the legislature concerned does not confer any more sanctity or immunity as though they are statutory provisions themselves. Consequently, when the power to make regulations is confined to certain limits and made to flow in a well-defined canal within stipulated banks, those actually made or shown and found to be not made within the confines but outside them, the courts are bound to ignore them when the question of their enforcement arises and the mere fact that there was no specific relief sought for to strike down or declare them ultra vires, particularly when the party in sufferance is a respondent to the lis or proceedings cannot confer any further sanctity or authority and validity which it is shown and found to obviously and patently lack."**

Even without pronouncing on the validity or otherwise of the guideline relied on by the appellants, according to us, even as per the guidelines, the satisfaction is required to be only at the earliest opportunity subject to 50% rule. This guideline has to be read consistent with Rule 14 (b) and if that be so, the prescription in the guideline cannot be understood as one requiring the appellants to advice a reserved candidate included in the merit list against a reserved vacancy.

8. If that is the position as available in the Rule, Saji.V.S the third candidate in the merit list ought to have been advised against an open competition vacancy and the 1st respondent, against the

reserved vacancy of Ezhava community. However, we cannot agree with the view of the Learned Single Judge that the 1st respondent ought to have been advised against the first vacancy in the third recruitment year, making the ranked Sri.Saji.V.S. to wait until the availability of a general vacancy despite his having proved to more meritorious than the 1st respondent. This situation could be reconciled in the same manner as ordered to be done by the Division Bench in the case of **Life Insurance Corporation of India v. Wilson George (1997 (2) KLT 218**) by allowing the appointing authority to take an appropriate decision on the post of seniority among Saji.V.S and 1st respondent.

In the result we do not find any merit in the writ appeal and the appeal will stand dismissed without any order as costs.

P.R.Raman,
Judge.

Antony Dominic
Judge.

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